

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on February 12, 2003 at
5:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: SB 30; SB 89; SB 217; SB 160

EXECUTIVE ACTION ON SB 30

Taryn Purdy, Legislative Services, advised the fiscal impact in the second fiscal note is estimated to be \$291,850 per year of general fund. The difference between the two fiscal notes hinges on how many of these cases would go to court. The judiciary is estimating that half of the contested cases would go to court.

SEN. JERRY O'NEIL'S fiscal note estimates are based on experience in other states and a significantly lower percentage of cases would go to court.

Motion: **SEN. COREY STAPLETON** moved that **SB 30 DO PASS**.

SEN. JOHN ESP wondered about the wisdom of going to a jury trial with a child involved and he didn't know how many parents would put kids through that.

SEN. COREY STAPLETON advised there had been a policy debate on the Senate Floor and the bill passed. He felt the number was closer to the sponsor's numbers than those of the department. Other states had a limited number of cases, and a jury would not be a bad safety valve option.

SEN. BOB KEENAN advised he heard the question differently--the concern about kids going to court and having to testify. That is addressed in line 5C which talks about alternative means of testimony.

SEN. BEA MCCARTHY advised she had been subpoenaed to court in a case involving a six-year-old child. It was a closed court hearing before a judge and under the circumstances, she was very pleased it was not a jury trial because of the testimony that had to come forth in the hearing. It is an experience one doesn't care to go through, but sometimes necessary particularly in her profession.

SEN. EMILY STONINGTON said as long as the bill is back in committee, she assumed it was okay to debate the substance of the bill and not just the fiscal note.

CHAIRMAN TOM ZOOK clarified it is.

SEN. STONINGTON stated following debate on the floor, she received a letter from the county attorney in her district who said he was disappointed to see "this perennial bad idea is back. Why don't we have jury trials in divorce cases. After all parental rights are involved, aren't they? How can we simply trust to district judges the responsibility of determining who should parent and how and what is in the best interests of

children? Each of us can think of several reasons why we shouldn't have juries decide children's issues in divorce proceedings. So what is different about termination of parental rights cases? Do you really think juries ought to or want to listen to the litany of physical abuse, drug abuse, psychologists who hate the parents, psychologists who love the parents, psychologists who have spent time with the children, the guardian's opinion as to the child's best interest or should we trust all that to judges the way we do in divorce proceedings?" She wanted everyone to keep in mind that a hearing in front of the judge happens at the end of a very long process whose efforts are all intended to keep the family together so that by the time a judge is hearing a case like this, these are parents who are having a lot of trouble being parents and who are in this situation because of abuse and neglect and generally pretty severe abuse and neglect. She thought taking the last step to a jury trial is as the county attorney expressed, a "...terrible idea folks, terrible. It won't serve the ends of justice at all. It just seeks to get at **DPHHS** and the important interest **DPHHS** represents like protecting abused children. **DPHHS** is in enough difficulty right now, don't add to it." She agreed with her county attorney.

VICE-CHAIRMAN BILL TASH recalled hearing similar bills and in particularly one in **House Judiciary Committee** which first prompted protection of the child's interest where its necessary for a child to testify in a jury trial. SB 30 protects the child's interest by alternative measures--testimony by closed circuit television to make sure the child involved isn't intimidated by having to go before a jury. He felt it was a good and necessary bill.

SEN. KEITH BALES agreed it is a good bill and contended no jury likes to hear about anything whether it's a drug case, a murder case or whatever it might be. He thought the prime issue was for the person that's having the child taken away from them have the total options of due process under the law. He didn't think it would be used often but thought there were cases when that option should be available. It might tend to make everybody consider their actions a little more and **DPHHS** will make sure they can justify where they're coming from. He felt it a good alternative that would rarely be used and a right that should be given to those parents. Removing children from their parents is a tough thing to do. He contended a divorce was a different situation than taking children from one or both parents and called it a good bill to address a very bad situation.

SEN. RICK LAIBLE advised he was leaning toward the bill but the issue was what's best for the child. He didn't think the bill is

addressed that. The jury trial is what's best for the parents if they want to try to hold supervision over the child. He wanted a sense of whom the bill was trying to protect.

SEN. DEBBIE SHEA advised she taught school for 26 years and two of her former students now have children and were not doing a good job of caring for their children so they went to the care of the grandparents. She thought it would be a sad and difficult situation to have grandparents and their children in court in front of a jury fighting over children. She felt that would be hard wounds to heal in years to come. In more cases than not, grandparents take these kids, she contended, and they are very serious about it, committed to raising them, very upset with their children and would go as far as a jury trial. She thought it would divide families and have after effects that can never be healed.

SEN. GREGORY BARKUS spoke against the motion. He thought it was bad to drag children into the courtroom and characterized the bill as an "attorney relief act."

SEN. TRUDI SCHMIDT advised she worked some in this area and remembered an instance with three kids involved. It was a pretty messy situation and the judge had to be careful with how he dealt with the kids in the family and she couldn't imagine them having to go before a jury trial. She knew of several other instances and there was no way she could support the bill.

CHAIRMAN ZOOK advised the bill did pass on the floor and it was the committee's basic responsibility to look at the finances of it and not necessarily the content of the bill, although that is done quite often and he did not object to it. He thought they should look at the dollars involved and judge the bill in that manner remembering it did pass on the floor. He indicated he would vote for the bill.

SEN. JOE TROPILA stated he would rather not judge dollars against children.

SEN. SHEA asked if the bill mandates something for counties.

CHAIRMAN ZOOK advised jury member costs would be at county expense.

SEN. SHEA stated that was a real consideration when considering passing the bill.

CHAIRMAN ZOOK advised that **Taryn Purdy, Legislative Division**, pointed out they would be civil trials and the expense would be the responsibility of the judiciary.

Vote: Motion SB 30 DO PASS failed 8-9 with **BALES, BARKUS, COBB, ESP, KEENAN, LAIBLE, STAPLETON, and ZOOK** voting aye.

CHAIRMAN ZOOK advised a tie vote and that other members could show up and vote on the bill.

SEN. STAPLETON asked if excused members would be allowed to vote if they come in during the next hour.

CHAIRMAN ZOOK advised he would allow it within twenty-four hours and would extend that same courtesy to every member of the committee.

SEN. SHEA stated it was not a tie vote--it was nine no and eight yes.

CHAIRMAN ZOOK said even so, those absent should be allowed to vote.

EXECUTIVE ACTION ON SB 89

SEN. BILL TASH, SD 17, Dillon, advised he introduced the bill in local government and is a bill to exempt property held by local government entities from the uniform unclaimed property act. He said it was a result of the "big bill." Before the big bill unclaimed properties were claims that counties could make on state government to reclaim money back into county coffers. The reason it was re-referred to **Senate Finance Committee** was the general fund hit of \$139,000 each year.

SEN. BEA MCCARTHY asked for clarification on the bill. Two years ago there was an unclaimed property sale and she wondered if this is the same stuff.

SEN. TASH indicated it is, and unclaimed properties unclaimed from the source, go to the state.

SEN. MCCARTHY asked if the disposition of the money would be changed.

SEN. TASH indicated a claim for the money was previously filed by the counties to the state. SB 89 is a bill exempting property held by local government entities from the uniform unclaimed property act. Local government entities would be entitled to that money back to county coffers.

Motion: SEN. LAIBLE moved that SB 89 DO PASS.

Substitute Motion: SEN. ESP made a substitute motion that SB 89 BE INDEFINITELY POSTPONED.

Discussion:

SEN. BALES opposed the substitute motion because he got letters from county commissioners regarding county warrants. Some of the prizes given at the fair weren't cashed in because the recipients thought they would save the county money. If the county writes a warrant it becomes a property of the state and so it's transferring money from the county to the state. He thought the bill was a good bill and should pass.

SEN. LAIBLE agreed the majority is county money. He understood it would be taken from the general fund, but it never should have been in the general fund. Either people over pay their county or don't collect prize money from the fair because they want to donate it back to the county. They think they're donating back to the county when in fact its going back to the state. He felt the money belongs back in the counties.

SEN. SCHMIDT advised receiving a letter from a clerk and recorder in Sanders County and asked for a comment from **SEN. TASH**.

CHAIRMAN ZOOK asked if this is a new direction; the money has never gone to the counties in this way previously.

SEN. TASH advised it did before the big bill was passed and the counties filed with the state for the money to be returned. It was something counties used in their budgeting. He carried the bill on behalf of **MACO**. It was a resolution brought forth from **MACO** last summer. They are claiming a county exemption. He indicated he would vote no against the substitute motion. He advised **SEN. SCHMIDT** that he had received the same fax and the county treasurer was correct that when the county treasurer reimburses the bank for the actual dollars, it leaves a shortfall.

Vote: Motion failed 8-10 with BARKUS, COBB, ESP, JOHNSON, KEENAN, STAPLETON, TROPILA, and ZOOK voting aye.

Vote: Motion that SB 89 DO PASS passed 11-8 with BARKUS, BUTCHER, COBB, ESP, JOHNSON, KEENAN, STAPLETON, and ZOOK voting no.

CHAIRMAN ZOOK advised **SEN. JOHNSON** and **SEN. BUTCHER** about the vote earlier on **SEN. O'NEIL'S** SB 30. The motion was DO PASS and their yes or no votes were needed to be recorded. **SEN. BUTCHER** indicated yes and **SEN. JOHNSON** indicated no. The bill did not pass.

Vote: Motion that SB 30 BE INDEFINITELY POSTPONED carried 14-5 with **BUTCHER, COBB, KEENAN, STAPLETON, and TASH** voting no.

EXECUTIVE ACTION ON SB 160

CHAIRMAN ZOOK advised SB 160 required **DPHHS** to develop strategic plans with performance measures.

Motion: **SEN. COBB** moved that SB 160 DO PASS.

CHAIRMAN ZOOK asked about the fiscal note. The old fiscal note had a substantial hit but the new one is zero.

SEN. COBB indicated the department's note is zero.

Discussion:

SEN. SCHMIDT asked about the intent of the bill.

SEN. COBB stated the intent is to make the department bring their goals and outcomes to the interim committee. The department already does this internally but doesn't present it to the legislature. Examples are how many people they will help in chemical dependency, how many investigations on child care or kids put in foster care. Those are the types of goals other states are mandating. The legislature can make comments and, if this works, in the future the legislature can mandate. Sometimes the department has goals the legislature doesn't really like and the legislature needs to start looking at those things.

Vote: Motion that SB 160 DO PASS carried unanimously.

EXECUTIVE ACTION ON SB 243

SEN. MCCARTHY asked if the bill has a fiscal note and **CHAIRMAN ZOOK** indicated it didn't need one.

Ms. Purdy advised the bill doesn't change how much money would be spent by this authority but would move the money off budget. The legislature appropriates this money in HB 2 and changing it to an enterprise account means it would go off budget. The governor's office is required to provide a report on the enterprise funds.

CHAIRMAN ZOOK looked at the audit and believed the bill was recommended by the auditor.

SEN. JOHNSON asked **Ms. Purdy** to repeat her explanation.

Ms. Purdy stated that statute requires for every enterprise account because the legislature does not appropriate these funds and unlike internal service funds which are another proprietary account where the legislature sets the rates, the legislature does not set the rates on these funds. The governor's office in every budget is required to have a report on the status of the fund.

SEN. JOHNSON asked the reason for the bill.

Ms. Purdy indicated it was not a question of something not working. If the auditor is recommending it go into another account, they are essentially saying it is more appropriate based upon the realities of the account--it operates more like a business enterprise--and should be recorded as a different fund type and a different expenditure type.

SEN. JOHNSON asked if there is no accounting in the budget for the legislature to look at.

Ms. Purdy advised the legislature would not appropriate the funds but would get the report on the status of the fund from the governor's office. The **Department of Commerce** would be able to spend what they received without the legislature setting that appropriation level.

SEN. JOHNSON warned "anytime you're not afraid of that, you're not afraid of anything" and he didn't think this ought to happen.

CHAIRMAN ZOOK advised setting the bill aside and he would bring the audit report next time.

EXECUTIVE ACTION ON HB 217

CHAIRMAN ZOOK stated the bill was at the request of the budget office and has a positive impact on the general fund.

Motion/Vote: **SEN. SHEA** moved that **SB 261 DO PASS**. Motion carried unanimously.

SEN. STAPLETON advised SB 30 except for the committee's action today would have gone right on third reading. He felt it was owed to the body that if the bills are going to be killed in

committee, the committee ought to at least object to the cost. He contended the committee did not talk about the fiscal note, they just didn't like the bill so they killed it here. He advised thinking about that.

CHAIRMAN ZOOK advised at some point it is possible to reconsider the committee's action.

SEN. SHEA said she agreed with **SEN. STAPLETON**, but reasoned it was very difficult to vote positively for a piece of legislation one is adamantly opposed to.

ADJOURNMENT

Adjournment: 5:56 P.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs31aad)